JUDGMENT OF THE COURT (Third Chamber)
4 July 1985 *

In Case 134/84

Calvin E. Williams, represented by Victor Biel of the Luxembourg Bar, 18 A rue des Glacis,

applicant,

v

Court of Auditors of the European Communities, represented by its Secretary, Jean-Aimé Stoll, acting as Agent, assisted by Lucette Defalque, of the Brussels Bar, 38 avenue des Klauwaerts, 1050 Brussels, with an address for service in Luxembourg at the seat of the Court of Auditors, 29 rue Aldringen,

defendant,

APPLICATION for the annulment of the decision of the Court of Auditors of 10 November 1983 implementing the judgment of the Court of Justice of 6 October 1982 (Case 9/81, [1982] ECR 3301) and reclassifying the applicant in a step which he does not consider high enough,

THE COURT (Third Chamber)

composed of: C. Kakouris, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: G. F. Mancini
Registrar: D. Louterman, Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 6 June 1985,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 18 May 1984, Calvin Williams, an official of the Court of Auditors of the European Communities, brought an action for the annulment of the decision of the Court of Auditors of 10 November 1983 implementing the judgment of the Court of Justice of 6 October 1982 (Case 9/81 *Williams* v *Court of Auditors* [1982] ECR 3301) and reclassifying him in a step which he does not consider high enough.

2 The judgment of 6 October 1982 concerned a dispute which had its origin in the publication by the Court of Auditors of a 'General Decision' 21 February 1980 relating to the criteria for the appointment and classification of staff. In the course of 1980, the Court of Auditors recruited officials and other staff who were not already in the service of the Communities. Those persons were classified, with effect from 21 February 1980, in accordance with the new criteria laid down by the aforesaid decision, which is in the nature of an internal directive.

3 Article 3 of that Decision is entitled 'Additional seniority allowance' and reads as follows: 'In consideration of a candidate's professional experience which exceeds the length of that taken into account for determining his grade of appointment, the appointing authority shall allow additional seniority in accordance with the annexed table' for Grades A 5 to A 7, a maximum of 48 months). Article 4, entitled 'Temporary staff appointed as officials', provides that: 'A member of the temporary staff appointed as a probationer to a post in the same career bracket and placed in the same grade shall, on the date of his appointment as a probationer, be entitled to the seniority acquired since his appointment as a member of the temporary staff.'

4 The applicant was recruited as a temporary servant on 1 October 1974 by the Audit Board, which was then part of the Council of the European Communities. He was classified in Grade A 7, Step 2. On 1 October 1976, following his successful participation in a competition, the appointing authority of the Council

appointed him a probationary official in Grade A 7, Step 3. On 14 June 1977 he was established in that grade. On 1 May 1978 he was transferred to the Court of Auditors at his own request, without any change in his grade and step. Like all the other officials transferred to the Court of Auditors, the applicant was promoted, in his case with effect from 1 May 1979 to Grade A 6,Step 1, his seniority in that step being antedated to 1 July 1977. He thus reached Step 2 of Grade A 6 on 1 July 1979.

5 According to Mr Williams, however, the application of the classification criteria laid down by the General Decision of 21 February 1980 resulted in discrimination against existing officials transferred, like him, from the Audit Board, as compared with newly recruited officials and other servants.

6 In an action brought by Mr Williams requesting the Court to terminate that inequality, the Court held in the aforesaid judgment of 6 October 1982 that on the basis of the principle of equality of treatment as between officials of the same category, expressed in Article 5 (3) of the Staff Regulations of Officials, 'the defendant's decision refusing to review the applicant's classification should be annulled and the defendant should be ordered to classify the applicant in the appropriate step, taking account of his experience and possibly of his qualifications in conformity with the Decision of February 1980, in order to remove the difference in classification between him and officials from outside the Community to whom the classification criteria of the abovementioned Decision have been applied'.

7 In Paragraph 1 of the operative part of the judgment of 6 October 1982, the Court ordered the Court of Auditors to correct the step assigned to the applicant with effect from 12 May 1980 (the date of his complaint) and to observe the criteria laid down in its Decision of February 1980.

8 In order to comply with that judgment the Court of Auditors adopted a decision dated 10 November 1983 in which the detailed statement of reasons leads to the conclusion that in order to comply with Article 32 of the Staff Regulations, the reclassification which must be carried out since it was a case of 'discrimination between a transferred official and a newly recruited official must result in the granting of additional seniority not exceeding 48 months'. On that basis, since on

12 May 1980 the applicant was in Grade A 6, Step 2, with seniority in step from 1 July 1979, the Court of Auditors corrected his classification with effect from 12 May 1980 in the following way: he was placed in Grade A 6, Step 3, with effect from 12 May 1980; and in Grade A 6, Step 4, with effect from 12 May 1982.

9 By a complaint dated 14 December 1983, the applicant challenged the manner in which the Court of Auditors had applied the judgment of the Court of 6 October 1982. He stated that he ought to have been reclassified with effect from October 1974, the date of his recruitment as a member of the temporary staff, with the result that he should have been appointed on 12 May 1980 to Grade A 6, Step 5, with seniority in step from 16 December 1978.

10 Mr Williams' complaint was rejected by a decision dated 16 March 1984 and he then brought the present action, claiming that the Court should annul the decision of 10 November 1983 reclassifying him and the decision of 16 March 1984 rejecting his complaint.

11 Initially, both during the administrative stage and during the written procedure before the Court, the applicant sought additional seniority by virtue of both Article 3 and Article 4 of the General Decision of 21 February 1980.

12 However, in his most recent conclusions, formulated at the hearing, the applicant stated that he was abandoning any claim based on Article 3 of the General Decision and was merely asking for an additional step in respect of the period between 1974 and 1976, when he was a member of the temporary staff, pursuant solely to Article 4 of the General Decision.

13 The applicant does not deny that he has been granted by the Court of Auditors a total of 48 months' additional seniority both when he was placed in Grade A 6 and in implementation of the judgment of 6 October 1982. He demands, however, that Article 4 of the internal Directive of February 1980 should be applied and submits that he is entitled to additional seniority of one step in respect of the period which he spent as a member of the temporary staff. He claims, first, that the Court of Auditors cannot depart from its own internal directive and, secondly, that by virtue

of the principle of equality the seniority in step to which he is entitled cannot be limited to 48 months, since the Court of Auditors has in the past allowed much greater seniority to staff recruited from outside. The refusal to allow him the seniority claimed therefore perpetuates discrimination which was condemned by the Court in its judgment of 6 October 1982.

14 It must be pointed out that, although the Court in its judgment of 6 October 1982 ordered the Court of Auditors to 'remove the difference in classification between him and officials from outside the Community', it could not have intended to authorize the Court of Auditors to breach the provisions of the Staff Regulations, and in particular Article 32. The principle of equality of treatment, to which that judgment refers, must be reconciled with the principle of legality, according to which no person may rely, in support of his claim, on an unlawful act committed in favour of another (judgment of 9 October 1984 in Case 188/83 *Witte* v *European Parliament* [1984] ECR 3465).

15 Thus the sole effect of the judgment of 6 October 1982 was to require the Court of Auditors to restore equality of treatment between officials, subject to the limits on the additional seniority which may be granted under Article 32 of the Staff Regulations.

16 As the Court held in its judgments of 12 July 1984 (Case 17/83 *Angelidis* v *Commission* [1984] ECR 2907) and of 6 June 1985 (Case 146/84 *De Santis* v *Court of Auditors* [1985] ECR 1731), periods of service as a member of the temporary staff of an institution, together with qualifications and other professional experience, are to be taken into account on the basis of Article 32 of the Staff Regulations. They are therefore subject to the same restrictions on the maximum additional seniority that may be granted, that is to say — for the grade in question — 48 months.

17 Since the applicant does not dispute that the Court of Auditors has allowed him seniority at the maximum authorized rate, he is not entitled to rely upon the judgment of 6 October 1982 in order to claim additional seniority.

18 It follows from the foregoing that the application must be dismissed.

Costs

19 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, Article 70 of the Rules of Procedure provides that institutions shall bear their own costs in proceedings commenced by employees of the Communities, without prejudice to the second paragraph of Article 69 (3), which authorizes the Court to order a party to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur.

20 The Court of Auditors contends that the proceedings commenced by the applicant must be regarded as abusive and vexatious and therefore asks the Court to order the applicant to pay the whole of the costs.

21 It must be noted that the Court of Auditors itself experienced some difficulties in implementing the judgment of the Court of 6 October 1982, since on 24 November 1982 it lodged an application for the interpretation of that judgment in which it asked whether or not Article 4 of the Decision of 21 February 1980 applied to Mr Williams. Under those circumstances the proceedings commenced by the applicant cannot be regarded as abusive or vexatious and the parties should be ordered to bear their own costs.

On those grounds

THE COURT (Third Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 4 July 1985.

P. Heim
Registrar

C. Kakouris
President of the Third Chamber